

August 28, 2017

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re:   *Advanced Methods to Target and Eliminate Unlawful Robocalls***  
CG Docket No. 17-59, Second Notice of Inquiry, July 13, 2017

Dear Ms. Dortch:

On behalf of Anthem, Inc. (“Anthem”), a health benefits company with one of the largest memberships in the United States, I write in support of the Federal Communications Commission’s (“FCC”) proposal to create a database to serve as a “comprehensive reassigned number resource.”<sup>1</sup>

A comprehensive and reliable source identifying reassigned numbers would be a step toward resolving the “Reassigned Number Problem” under the Telephone Consumer Protection Act (“TCPA”). This problem was not solved by the *2015 TCPA Declaratory Ruling*<sup>2</sup>, and in fact, was made worse. If implemented and maintained correctly, a database tracking reassigned numbers would be a “win-win” solution—both protecting consumers from unwanted calls, and helping protect high-value outreach calling to consumers.

**Current law makes full compliance practically impossible, hence the “Reassigned Number Problem.”**

Despite the FCC’s explicit aim in interpreting the TCPA to protect consumers “without inhibiting legitimate business communications,”<sup>3</sup> the *2015 TCPA Declaratory Ruling* created an impractical, costly framework for reassigned numbers. In that ruling, the FCC found that “[c]allers are liable for robocalls to reassigned wireless numbers when the current subscriber to or customary user of the number has not consented, subject to a limited, one-call exception for cases in which the caller does not have actual or constructive knowledge of the reassignment.”<sup>4</sup>

---

<sup>1</sup> See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, CG Docket No. 17-59, FCC 17-90, 2017 WL 30000795, at \*2 ¶¶ 5–6 (July 13, 2017).

<sup>2</sup> *Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, WC Docket No. 07-135, 30 FCC Rcd 7961 (2015).

<sup>3</sup> *Id.* at 7969 ¶ 5.

<sup>4</sup> *Id.* at 7965 ¶ 2.

Ms. Marlene H. Dortch, Secretary  
August 28, 2017  
Page 2

Under this framework, companies incur immediate liability for all but the first communication to a phone number that previously belonged to a customer, regardless of whether that outreach actually resulted in a connection.<sup>5</sup> As Commissioner O’Rielly correctly noted in recent comments, “the exemption does not require consumers to accurately inform the caller that the number has been reassigned; ignores the worthlessness of uninformative voicemails; and even counts call attempts or informational texts where there was no response at all against the one-call policy.”<sup>6</sup> This overbroad restriction has been a boon for enterprising plaintiffs and their attorneys, with some serial TCPA litigants going as far as purchasing dozens of prepaid cell phones in depressed economic areas solely to bait companies into reassigned number liability.<sup>7</sup>

Simply put, the current approach of the FCC is unworkable. A company desiring to make legitimate outreach calls to consumers simply has no realistic way of ensuring that a number has not been reassigned until after liability has been triggered.

**Anthem supports a central reassigned number database.**

A central reassigned number database would allow for more equitable administration of the TCPA’s consent rules. Such a database should include, at minimum, the reassigned phone number and the date of reassignment. A company could subscribe to the database, and, by comparing its own list of telephone numbers with the date of reassignment of numbers on the list, identify numbers that have been reassigned and hence should not be called.

In addition to establishing a repository of reassigned number data, it is appropriate that the FCC also consider carving out a safe harbor for entities that responsibly use the repository, but nonetheless call a reassigned number not yet reflected in the database. If a phone number is not in the database, companies should not incur financial liability when they have evidence of prior express consent for that number and no subsequent revocation by the new subscriber or primary user. Protecting companies that use the database, on the other hand, would encourage use of the database and serve consumers by protecting them from unwanted or irrelevant calls.

In lieu of initiating a new proceeding to reevaluate the *2015 TCPA Declaratory Ruling*<sup>8</sup>, the FCC’s Second Notice of Inquiry provides an opportunity for a solution that resets the balance

---

<sup>5</sup> *Id.* at 8000 ¶ 71 (“If this one additional call does not yield actual knowledge of reassignment, we deem the caller to have constructive knowledge of such.”).

<sup>6</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59; *Call Authentication Trust Anchor*, WC Docket No. 17-97, Statement of Commissioner Michael O’Rielly (*O’Rielly Statement*).

<sup>7</sup> *See Stoops v. Wells Fargo Bank, N.A.*, 197 F. Supp. 3d 782, 787–89 (W.D. Pa. 2016).

<sup>8</sup> *See O’Rielly Statement*, *supra* note 6 (“In addition, the Commission should initiate a new proceeding to effectuate this change.”).

Ms. Marlene H. Dortch, Secretary  
August 28, 2017  
Page 3

in a way that benefits both consumers *and* businesses. The primary benefit to consumers is that consumers with reassigned numbers will not receive unwanted or irrelevant calls intended to a prior holder of the number. The primary benefit to businesses is reducing the risk of severe financial exposure when customers change phone numbers without a company's knowledge.

Anthem supports this mutually beneficial outcome as a responsible and equitable exercise of the FCC's regulatory authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad R. Fuller". The signature is stylized with a large, looped "C" and "F".

Chad R. Fuller